

Act No. 79
Public Acts of 2016
Approved by the Governor
April 12, 2016
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April 12, 2016
EFFECTIVE DATE: July 11, 2016

**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2016**

Introduced by Senators Hertel, Schuitmaker, O'Brien, Knezek, Hood, Young, Jones, Ananich, Gregory, Marleau and Schmidt

ENROLLED SENATE BILL No. 366

AN ACT to regulate the solicitation of certain deeds; to prescribe the powers and duties of certain state agencies and officials; and to prescribe penalties and provide remedies.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "solicitation of deeds act".

Sec. 2. As used in this act:

(a) "Deed" means a written instrument entitled to be recorded in the office of the register of deeds that purports to convey or transfer title to a freehold interest in any lands, tenements, or other realty in this state by way of grant or bargain and sale from the named grantor to the named grantee. A leasehold interest for 99 years or more or a proprietary lease of a cooperative unit and any assignment of a proprietary lease of a cooperative unit shall be treated as a "freehold". Deed does not include instruments providing for any of the following:

- (i) Common driveways.
- (ii) Exchanges of easements or rights-of-way.
- (iii) Revocable licenses to use, adjust, or clear defects of or clouds on title.
- (iv) Utility service lines such as drainage, sewerage, water, electric, telephone, or other such service lines.
- (v) Quitclaim of possible outstanding interests.

(b) "Department" means the department of attorney general.

(c) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(d) "Public body" means that term as it is defined in section 2 of the freedom of information act, 1976 PA 442, MCL 15.232.

(e) "Rule" means a rule promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(f) "Solicit" means to advertise or market to a person with whom the solicitor has no preexisting business relationship.

Sec. 3. (1) A person soliciting a fee for providing a copy of a deed or a free copy of a deed in connection with the solicitation for any other service or product shall state on the top of the document used for the solicitation, in at least 24-point type, all of the following:

- (a) That the solicitation is not from a public body.
- (b) That no action is legally required by the person being solicited.

(c) The statutory fee for, or the cost of, obtaining a copy of the deed from the public body that has custody of the record.

(d) The information necessary to contact the public body that has custody of the deed.

(e) The name and physical address of the person soliciting the fee.

(2) The document used for a solicitation under this section shall not be in a form or use deadline dates or other language that makes the document appear to be a document issued by a public body or that appears to impose a legal duty on the person being solicited. The department may promulgate rules specifying the contents and form of the solicitation document.

(3) A person soliciting a fee for providing a copy of a deed shall not charge a fee of more than 4 times the statutory fee charged by the public body that has custody of the deed for a copy of that deed.

(4) A person soliciting a fee from property owners for providing a copy of a deed shall furnish the office of the register of deeds of each county where the solicitations are to be distributed with a copy of the document that will be used for those solicitations not less than 15 days before distributing the solicitations.

Sec. 4. This act does not apply to any of the following:

(a) A title insurance company authorized to do business in this state or its authorized agent.

(b) A licensed mortgage loan originator, mortgage broker, lender, or servicer, or a depository financial institution authorized under state and federal law to originate or service mortgage loans.

(c) A real estate broker or salesperson licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518.

Sec. 5. The department may investigate violations of this act. The department may request the attorney general to bring an action against any person that violates this act. The court may order a person that violates this act to refund all of the money paid to the violator with respect to the solicitation. In addition, the person may be ordered to pay, for a first violation, a civil fine of not more than \$100.00 for each solicitation document distributed in violation of this act or, for a subsequent violation, a civil fine of not more than \$200.00 for each solicitation document distributed in violation of this act. A fine collected under this section shall be paid to the clerk of the court. A civil fine collected under this section shall be distributed to public libraries in the same manner as provided for penal fines under 1964 PA 59, MCL 397.31 to 397.40.

Sec. 6. (1) If the attorney general has probable cause to believe that a person has engaged, is engaging, or is about to engage in a method, act, or practice that is unlawful under this act, and gives notice in accordance with this section, the attorney general may bring an action in accordance with principles of equity to restrain the defendant by temporary or permanent injunction from engaging in the method, act, or practice. The action may be brought in the circuit court of the county where the defendant is established or conducts business or, if the defendant is not established in this state, in the circuit court of Ingham County.

(2) Unless waived by the court on good cause shown not less than 10 days before the commencement of an action under this section, the attorney general shall notify the person of his or her intended action and give the person an opportunity to cease and desist from the alleged unlawful method, act, or practice or to confer with the attorney general, in person, by counsel, or by other representative as to the proposed action before the proposed filing date. The notice may be given the person by mail, postage prepaid, to his or her usual place of business or, if the person does not have a usual place of business, to his or her last known address, or, if the person is a corporation, only to a resident agent who is designated to receive service of process or to an officer of the corporation.

(3) A person that knowingly violates the terms of an injunction, order, decree, or judgment issued pursuant to this section shall forfeit and pay to the state a civil fine of not more than \$5,000.00 for each violation. For the purposes of this section, the court issuing an injunction, order, decree, or judgment shall retain jurisdiction, the cause shall be continued, and the attorney general may petition for recovery of a civil fine as provided by this section.

Sec. 7. (1) Upon the ex parte application of the attorney general to the circuit court in the county where the defendant is established or conducts business or, if the defendant is not established in this state, in Ingham County, the circuit court, if it finds probable cause to believe a person has engaged, is engaging, or is about to engage in a method, act, or practice that is unlawful under this act, may, after an ex parte hearing, issue a subpoena compelling a person to appear before the attorney general and answer under oath questions relating to an alleged violation of this act. A person served with a subpoena may be accompanied by counsel when he or she appears before the attorney general. The subpoena may compel a person to produce the books, records, papers, documents, or things relating to an alleged violation of this act. During the examination of documentary material under the subpoena, the court may require a person having knowledge of the documentary material or the matters contained therein to attend and give testimony under oath or acknowledgment with respect to the documentary material.

(2) The subpoena shall include the notice of the time, place, and cause of the taking of testimony, the examination, or the attendance and shall allow not less than 10 days before the date of the taking of testimony or examination, unless for good cause shown the court shortens that period of time.

(3) Service of the notice shall be in the manner provided and subject to the provisions that apply to service of process upon a defendant in a civil action commenced in the circuit court.

(4) The notice shall do all of the following:

(a) State the time and place for the taking of testimony or the examination and the name and address of the person to be examined. If the name is not known, the notice shall give a general description sufficient to identify the person or the particular class or group to which the person belongs.

(b) State a reference to this section and the general subject matter under investigation.

(c) Describe the documentary material to be produced with reasonable specificity so as to indicate fairly the material demanded.

(d) Prescribe a return date within which the documentary material shall be produced.

(e) Identify the members of the attorney general's staff to whom the documentary material shall be made available for inspection and copying.

(5) At any time before the date specified in the notice, upon motion for good cause shown, the court may extend the reporting date or modify or set aside the notice and subpoena.

(6) The documentary material or other information obtained by the attorney general pursuant to an investigation under this section shall be confidential records of the office of the attorney general and shall not be available for public inspection or copying or divulged to any person except as provided in this section. The attorney general may disclose documentary material or other information as follows:

(a) To other law enforcement officials.

(b) In connection with an enforcement action brought pursuant to this act.

(c) Upon order of the court, to a party in a private action brought pursuant to this act.

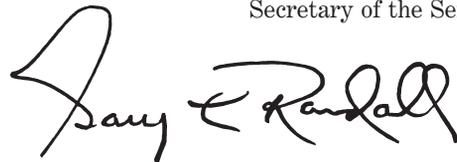
(7) A person that discloses information designated confidential by this section, except as permitted by subsection (6) or under court order, is guilty of a misdemeanor and may be fined not more than \$2,500.00 or imprisoned for not more than 1 year, or both.

Enacting section 1. This act takes effect 90 days after the date it is enacted into law.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor